

DEVELOPMENT AGREEMENT

THIS AGREEMENT made and entered into as of MARCH 12, 2018 by and between **Scalish Construction, LLC** (the "Contractor") and the **CITY OF LAKEWOOD, OHIO** (the "City") a political subdivision under the laws of the State of Ohio, under the circumstances summarized in the following recitals:

WHEREAS, pursuant to Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, the City of Lakewood receives a HOME Investment Partnerships Program ("HOME") grant through the Cuyahoga Housing Consortium for the purpose of providing affordable housing to low and moderate households; and

WHEREAS, the City has received funds from the U.S. Department of Housing and Urban Development for the purpose of providing affordable housing to low and moderate income ("LMI") households in accordance with The program is authorized under Title 1 of the Housing and Community Development Act of 1974, Public Law 93-383, as amended; 42 U.S.C.-5301 et seq. (herein "CDBG" Community Development Block Grant or "Program"); and

WHEREAS, the City of Lakewood may exercise various organizational, policy and programmatic options related to housing, including development agreements made pursuant to the HOME Program; and

WHEREAS, the City has determined that the Project will further the goals of the Program generally and the City's goal to provide affordable housing to low and moderate income households specifically; and

WHEREAS, in furtherance of the purposes of expanding the supply of affordable housing in the City, the City proposes to provide financial assistance pursuant to this Development Agreement.

NOW, THEREFORE, in consideration of the premises and the representations and agreements hereinafter contained, the City and the Contractor agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. **Use of Defined Terms.** In addition to the words and terms elsewhere defined in this Development Agreement or by reference to other instruments, the words and terms set forth in Section 1.2 hereof shall have the meanings therein set forth unless the context or use expressly indicates a different meaning or intent. Such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms therein defined.

Section 1.2. **Definitions.** As used herein:

“Affirmative Marketing” means steps which consist of action to provide information and otherwise attract Eligible Owners in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status or disability.

“Affordable” means a Program-assisted Project that must be occupied only by households that are eligible as low and moderate income families.

“Allowable Costs” means all third-party costs incurred in connection with construction and rehabilitation of the Project including, without limitation, acquisition, construction, redevelopment, holding and resale costs and costs necessary to complete all improvements itemized in Schedule A.

“City” means City of Lakewood, Ohio.

“Commencement Date” means the date construction of said project must begin as defined by Exhibit C.

“Completion Date” means the date, which shall occur no later than **June 15, 2018**, and as of which all of the following have been completed with respect to the Project: 1) construction of the Project has been completed and a final occupancy certificate issued in connection therewith, and 2) all required documentation as necessary to meet federal requirements has been provided by the Contractor to the City.

“Cost Certification” means a certification of the Contractor, as of a specified date, setting forth in reasonable detail the costs incurred and, if appropriate, to be incurred, by the Contractor in completing the Project, including a detail by category of all Allowable Costs.

“Department” means the City of Lakewood Division of Community Development, Department of Planning and Development.

“Contractor” means **Scalish Construction, LLC**

“Development Agreement” means this Development Agreement, as may be amended or supplemented from time to time.

“Director” means the Director of the City of Lakewood Department of Planning and Development.

“Disbursement Date(s)” means the date when all conditions to disbursements have been satisfied pursuant to Section 3.7 of this Development Agreement, and all or a portion of the payment is disbursed pursuant to the terms of Section 3.7 of this Development Agreement.

“Eligible Owner” means an individual or family that meets the low, moderate and middle income guidelines set forth herein and that acquires the Project Site from the Contractor upon completion of the Project, has received and completed homebuyer counseling from a HUD approved housing counseling agency prior to acquiring the Project Site, and who may qualify for and may participate in the City of Lakewood Down Payment Assistance Loan Program or a substantially similar program as determined by the City.

“Energy Efficient Improvement” means that all the following have been employed in or are a part of the Project: (a) any appliance, window or water heater installed as part of the Project is Energy Star qualified; (b) any furnace installed as part of the Project has an annual fuel utilization efficiency (AFUE) rating of 90% or greater; (c) installation of an Energy-Star qualified programmable thermostat; (d) installation of compact fluorescent light bulbs, (e) installation of dual flush toilets with a flushing capacity of not more than 2 gallons per flush; and (f) any other improvement mutually agreed upon..

“Environmental Law” means any federal, state or local law, regulation, ordinance, order or directive pertaining to the protection of the environment.

“Event of Default” means any of the events described as an event of default in Article 5 hereof.

“Final Cost Certification” means the Cost Certification to be provided by the Contractor to the City within thirty (30) days after the Completion Date.

“Force Majeure” means, without limitation:

- (i) acts of God; national strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; civil disturbances; riots; epidemics; landslides; nuclear accidents; lightning; earthquakes; fires; hurricanes; tornadoes; storms, droughts; floods; arrests; restraint of government and people; explosions, breakage, malfunction or accident to facilities, machinery, transmission pipes or canals; partial or entire failure of utilities; shortages of labor, materials, supplies or transportation; or
- (ii) any cause, circumstances or event not reasonably within the control of the Contractor.

“Governmental Authority” means, collectively, the State, any political subdivision thereof, any municipality, and any agency, department, commission, board or bureau of any of the foregoing having jurisdiction over the Project or the Project Facilities.

“Hazardous Substance” means a hazardous substance as defined under the Comprehensive Emergency Response Compensation and Liability Act of 1980, 42 U.S.C. § 6901, as amended from time to time.

“Hazardous Waste” means a hazardous waste as defined under the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, as amended from time to time.

“HOME Assisted Unit” or **“Program-Assisted Unit”** means the Project for which City funds have been utilized in its construction or rehabilitation.

“Notice Address” means:

- (a) As to the City:
City of Lakewood, Division of Community Development
12650 Detroit Avenue
Lakewood, Ohio 44107
- (b) As to the Contractor

Scalish Construction, LLC
13316 Madison Avenue
Lakewood, OH 44107
Attn.: Frank Scalish

or such additional or different address, notice of which is given under Section 6.2 hereof.

“Plans and Specifications” means the plans and specifications or other appropriate documents, including engineering specifications, utility plans and access to and from public rights of way describing the Project and its location and orientation on the Project prepared by or at the direction of the Contractor and approved by the Governmental Authorities having jurisdiction over the review and approval, all in accordance with laws and regulations applicable to the preparation, review and approval of such plans and specifications.

“Program-Assisted Unit” means the Project for which City Community Development Block Grant funds has been utilized in its construction or rehabilitation, and that is to be sold to LMI buyer-occupants.

“Project” means construction as defined in the Scope of Work attached hereto as Exhibit “B,” of a residential, single family, house or other residential property on land currently owned by city of Lakewood, located in Lakewood, Ohio that qualifies for funding under the Community Development Block Grant (CDBG) and HOME Programs.

“Project Amount” means 100% of the Allowable Costs, as adjusted pursuant to Section 3.7(b), not to exceed **\$157,284.24**.

“Project Site” means the Project location, being all or part of the land known as **1477 Lauderdale Avenue, Lakewood, OH 44107;**

“Reports” At such times and in such forms as the City, County or HUD require under the HOME Program Rules and Regulations, and the UAR, there shall be furnished to the City, County or HUD statements, records, data and information, pertaining to matters covered by this Agreement.

“Required IDIS Data” means that information that is requested by the City and the County with respect to the project and that is required by the U.S. Department of Housing and Urban Development (herein, “HUD”).

1.3. **Certain Words and References.** Any reference to a section or provision of the Constitution of the State, to a section, provision, chapter or title of the Ohio Revised Code or to a section or provision of federal law shall include any amendments or successor provisions to such section, provision, chapter or title.

The terms "hereof," "hereby," "herein," "hereto," "hereunder" and similar terms refer to this Development Agreement. Words of the masculine gender include the feminine and the neuter, and when the sense so indicates, words of the neuter gender may refer to any gender.

ARTICLE II

DETERMINATIONS AND REPRESENTATIONS

2.1. **Determinations of the City.** On the basis of the representations and other information provided by the Contractor, the City has heretofore made certain determinations that this Development Agreement will further expand the supply of affordable housing in the City and thereby improve the health, safety and general welfare of the people of the City.

2.2. **Representations, Warranties and Covenants of the Contractor.** The Contractor hereby represents, warrants and covenants, as applicable, that:

- (a) The Contractor is duly organized, validly existing and in full force and effect under the laws of the State of Ohio, and has all requisite power, corporate or otherwise, to conduct the Contractor's business, as presently conducted, to own, or hold under lease, the Contractor's assets and properties and is duly qualified to do business in all other jurisdictions in which the Contractor owns property and will remain so qualified and in good standing during the term of this Development Agreement.
- (b) The Contractor has full power and authority to execute, deliver and perform its obligations under the Development Agreement and to enter into and carry out the transactions contemplated thereby. Such execution, delivery and performance do not, and will not, violate any provision of law applicable to the Contractor or the Governing Instruments of the Contractor and do not, and will not, conflict with or result in a default under any agreement or instrument to which the Contractor is a party or by which the Contractor or any property or assets of the Contractor is or may be bound. The Development Agreement have, by proper action, been duly authorized, executed and delivered and all necessary actions have been taken in

order for the Development Agreement to constitute legal, valid and binding obligations of the Contractor.

- (c) The Project will be completed by the Contractor in such manner as to conform with all applicable Environmental Laws and zoning, planning, building and other governmental regulations imposed by any Governmental Authority and as to be consistent with the purposes of the Act.
- (d) There are no actions, suits or proceedings pending or threatened against or affecting the Contractor or the Project to the knowledge of the Contractor, which, if adversely determined, would materially impair the ability of the Contractor to perform any of the Contractor's obligations under this Development Agreement or adversely affect in any material manner the financial condition of the Contractor.
- (e) The Contractor is not in default in the payment of any indebtedness for borrowed money, or under any agreement or instrument evidencing any such indebtedness, and to the knowledge of the Contractor no event has occurred which by notice, the passage of time, or otherwise would constitute any such event of default.
- (f) The Project will be constructed in accordance with the Plans and Specifications.
- (g) The Contractor has made no contract or arrangement of any kind, other than the Development Agreement which has given rise to, or the performance of which by the other party thereto would give rise to (with the exception of possible non-payment of construction costs), a lien or claim of lien on the Project Facilities or other collateral covered by the Development Agreement.
- (h) No representation or warranty made by the Contractor, and no statement contained in any certificate, schedule, list, financial statement or other instrument furnished to the Director or the City, by or on behalf of the Contractor, contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained herein or therein not misleading.
- (i) All proceeds of the Development Agreement shall be used for the payment of Allowable Costs as presented in Exhibit A. No part of any such proceeds shall be knowingly paid to or retained by the Contractor or any partner, officer, manager, member, director or employee of the Contractor as a fee, kickback or consideration of any type.

ARTICLE III

CONSTRUCTION OF THE PROJECT AND CONDITIONS TO DISBURSEMENT

3.1. **Payment.** On the terms and conditions of this Development Agreement, the City shall reimburse the Contractor for Allowable Costs, for a total amount not to exceed **One Hundred Fifty Seven Thousand Two Hundred Eighty Four and 24/100 Dollars**

(\$157,284.24) to facilitate the construction of the Project on the Project Site. The payments shall be disbursed pursuant to the terms of Section 3.7 hereof and upon the satisfaction of the conditions set forth in Section 3.5 hereof.

3.2. **Completion of the Project.** The Contractor (a) has commenced or shall promptly hereafter commence the Project; and (b) shall pay all expenses incurred in connection with the Project from funds made available therefore in accordance with this Development Agreement, or otherwise, and (c) shall demand, sue for, levy and recover all sums of money and debts which may be due and payable under the terms of any contract order, receipt, guaranty, warranty, writing or instruction in connection with the completion of the Project and will enforce the terms of any contract, agreement, obligation, bond or other performance security with respect thereto.

3.3. **Liquidated Damages.** The time for completion of the work is an essential condition of the Development Agreement. The Contractor will proceed with the work at such rate of progress to insure full completion within the Completion Date. It is expressly understood and agreed, by the Contractor that the Completion Date is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the work.

- (a) If the Contractor shall fail to complete the work within the Completion Date or extension of time granted by the City, then the Contractor may be required to pay to the City the amount of \$100/day for liquidated damages for each calendar day that the Contractor shall be in default after the Completion Date.
- (b) The Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due to the following, and the Contractor has promptly given Written Notice of such delay to the Owner or Project Administrator:
 - (1) To any preference, priority or allocation order duly issued by the Owner; and
 - (2) To unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, or of the public enemy, acts of the City, acts of another Contractor in the performance of a contract with the City, fires, floods epidemics, quarantine restrictions, strikes, freight embargoes, and abnormal and unforeseeable weather.

3.4. **Plans and Specifications; Inspections.** At the City's option, the Director may designate an employee or officer of the City or may retain, at the City's expense, an architect, engineer, appraiser or other consultant for the purpose of approving the Plans and Specifications (in addition to the approval of the Governmental Authorities with jurisdiction over the Plans and Specifications), verifying costs and performing inspections of the Project as the Project progresses or by reviewing any construction contracts and payment or performance bonds or other forms of assurance of completion of the Project. Such inspections, reviews or approvals shall not impose any responsibility or liability of any nature upon the City and or the Director, or any officers, employees, agents, representatives or designees of the City and or the Director, without limitation, make or cause to be made any warranty or representation as to the adequacy or safety of the structures or any

of their component parts or any other physical condition or feature pertaining to the Project. The Contractor shall, at the request of the City, make periodic reports (including, if required, submission of updated Cost Certifications) to the City concerning the status of completion and the expenditures for costs in respect thereof.

The Contractor may revise the Plans and Specifications from time to time subject to the approval of the City. Said approval shall not be unreasonably withheld.

3.5. **Conditions to Disbursement.** The disbursement of payments shall be made on the Disbursement Date(s), provided that the City shall have received and approved the following on or before the Disbursement Date:

- (a) this Development Agreement, duly executed;
- (b) such certifications or reports concerning the Project Site, all in such form as may be requested by the City in connection with Program requirements associated with the Project and upon which the City shall be entitled to rely;
- (c) certificates of insurance and performance bond as required in Section 4.1;
- (d) Cost Certifications of total project;
- (e) certification by the Contractor that the Plans and Specifications, any construction contracts for the Project, and any payment and performance bonds or other forms of assurance of completion of the Project and construction contracts for the Project are available for review in accordance with Section 3.4 of this Development Agreement;
- (f) a certified copy of the Contractor's Governing Instruments, if applicable, from the Secretary of State dated within one hundred twenty (120) days prior to the Disbursement Date;
- (g) certified copies of the resolutions of the Contractor or other appropriate evidence of formal action, duly authorizing execution and delivery of all documents with respect to the Development Agreement and performance thereunder, as applicable;
- (h) all licenses and permits required by any Governmental Authority as to work then underway;
- (i) written verification from the City's Division of Building and Housing and/or Division of Community Development that any portion of the work Contractor is seeking reimbursement for has been completed and meets all applicable federal, state and local codes; and
- (j) any other certification required by federal, state or local law as identified by the City (i.e. Copland Anti-Kickback Clause, the Certification of Nonsegregated Facilities, Property Tax Certification, Non-Collusion Affidavit, etc.)

3.6. **Completion Date.** The Project shall be completed by not later than the Completion Date, subject to Force Majeure, and evidence of completion shall be furnished to the City by a certificate of the Contractor certifying (a) the date of completion, (b) that all licenses, permits and approvals, required by any Governmental Authority have been procured or

obtained in connection with the Project, (c) that the project has passed an interior and exterior inspection conducted by the City's Division of Housing and Building, (d) an inspection by the City's Division of Community Development confirming that all work stated in the Scope of Services is complete including any and all "punch list" items and lead based paint clearance; and (e) that all Required Integrated Disbursement and Information Reporting System (IDIS) documentation has been submitted (or such information shall be included with the certificate of Contractor required hereunder).

3.7 **Disbursement of Funds.** All disbursements for Allowable Costs shall be made on a reimbursement basis. The Contractor shall be responsible for the payment of all contractors, subcontractors and suppliers and submit necessary documentation for reimbursement from the City. In order for Contractor to obtain reimbursement, Contractor must submit all of the following documentation to the City:

- (a) A detailed invoice;
- (b) Any documentation as reasonably required by the City of Lakewood detailing that all subcontractors and suppliers have been paid relative to the portion of the project being reimbursed.

The City shall reimburse Contractor within 21 days after receiving the information specified in (a) and (b) above.

The City shall not be obligated to disburse any portion of the remaining payments for invoices submitted after ninety (90) days following the Completion Date, without prior written agreement of the City.

3.8 **Indemnification.** The Contractor shall defend, indemnify and hold the City and any officials, employees, agents or representatives of the City or the Director harmless against any and all loss, cost, expense, claims or actions arising out of Contractor's Scope of Work and this Development Agreement. The provisions of this Section shall survive the termination of this Development Agreement.

3.9 **Environmental Indemnity.** The Contractor, at its option, may obtain an environmental assessment of the Property, through an independent contractor. The Contractor shall indemnify and agree to defend and hold harmless the City, its officers, employees, agents and representatives from and against any loss, damage, cost, expense or liability arising out of or attributable to the use, generation, storage, release, threatened release, discharge or disposal by Contractor or any subcontractor of any Hazardous Substance, Hazardous Waste or other material regulated under any Environmental Law, including, without limitation: (i) all foreseeable consequential damages; (ii) the cost of any required or necessary repair, cleanup or detoxification of the Project Site, including the soil and ground water thereof, and the preparation and implementation of any closure, remedial or other required plans; (iii) damage to any Wetlands or natural resources; and (iv) all reasonable costs and expenses incurred by City in connection with clauses (i), (ii), and (iii), including but not limited to reasonable attorneys' and consultants' fees. This provision shall survive the termination of this Development Agreement.

ARTICLE IV

ADDITIONAL COVENANTS AND AGREEMENTS

4.1. **Affirmative Covenants of the Contractor.** Throughout the term of this Development Agreement, the Contractor shall:

- (a) **Section 3 of the Housing and Urban Development Act of 1968.** Comply with all applicable provisions of Section 3 of the Housing and Urban Development Act of 1968 as defined in Exhibit D which is fully incorporated herein and provide all reasonable documentation required by the City to provide evidence of compliance with Section 3.
- (b) **Taxes and Assessments.** Pay and discharge promptly, or cause to be paid and discharged promptly, when due and payable, all taxes, assessments and governmental charges or levies imposed upon the Contractor, the Contractor's income or any of the Contractor's property, or upon any part thereof, and pay or otherwise bond off all other claims of any kind (including claims for labor, materials and supplies) which, if unpaid, might by law become a lien or charge upon the Project or the Project Site.
- (c) **Maintain Existence.** Do or cause to be done all things necessary to preserve and keep in full force and effect the Contractor's existence and current organization.
- (d) **Maintain Insurance.** Keep all of the Contractor's insurable property including, without limitation, the Project, insured against loss or damage by fire and other risks, maintain public liability insurance against claims for personal injury, death, or property damage suffered by others upon, in or about any premises occupied by the Contractor; and maintain all such worker's compensation or similar insurance as may be required under the laws of any state or jurisdiction in which the Contractor may be engaged in business.
- (e) **Attachment of Project Site.** The Contractor will not permit to be recorded any document, instrument, agreement, or other writing against the Project Site without the prior consent of the City.
- (f) **Furnish Information.** To the extent requested, furnish or cause to be furnished to the City:
 - (i) **Certificate of Insurance.** Provide the City certificates of insurance naming the City of Lakewood as an additional insured on policies of insurance having, at a minimum, the following overages:
 - a) Commercial Liability \$1 million per occurrence/\$2 million aggregate
 - b) General Liability \$1 million per occurrence/\$2 million aggregate

c) Automobile Liability	\$1 million combined single limit
d) Umbrella	\$2 million
e) Workers' Compensation	Statutory
f) Builder's Risk	100% Completed Value
g) Performance Bond	100% of project amount

The certificates of insurance must give sixty (60) days prior written notice of cancellation, non-renewal, or adverse change to the City of Lakewood.

- (ii) **Other Information.** Such other information respecting the business, properties or the condition or operations, financial or otherwise of the Contractor as the City may reasonably request.
- (g) **Deliver Notice.** Forthwith upon learning of any of the following, the Contractor shall deliver written notice thereof to the City, describing the same and the steps being taken by the Contractor with respect thereto:
 - (i) the occurrence of an Event of Default or an event or circumstance which would constitute an Event of Default, but for the requirement that notice be given or time elapse or both; or
 - (ii) any action, suit or proceeding by or against the Contractor at law or in equity, or before any governmental instrumentality or agency, instituted or threatened which, if adversely determined, would materially impair the right or ability of the Contractor to carry on the business which is contemplated in connection with the Project or would materially impair the right or ability of the Contractor to perform the transactions contemplated by this Development Agreement, or would materially and adversely affect the Contractor's business, operations, properties, assets or condition.
- (h) **Inspection Rights.** Upon reasonable prior written notice, permit any duly authorized representative of the City, or any other appropriate governmental official, to examine and make copies of and abstract from the records and books of account and payroll of the Contractor, and discuss the general business affairs of the Contractor with any of the Contractor's members, managers or officers. The City or any appropriate government official shall be permitted to visit the Project Site at anytime without prior notice.
- (i) **Recruiting Policies.** Contractor shall have policies and procedures in place for the recruitment of Minority Business Enterprise/Women's Business Enterprise (MBE/WBE) and Section 3 owned businesses into the project and/or will follow the City's policies and procedures for such recruitment.
- (j) **Warranties.** Contractor shall warrant all work and materials supplied for a period of not less than one year from the date of Completion Date. In addition, Contractor shall provide the qualified purchaser with the manufacturer's warranties on all materials installed at the Project Site which carry a warranty.

- (k) **Fair Housing and Equal Opportunity.** All housing assisted with HOME funds must be made available without discrimination based on race, color, national origin, age, sex, religion, familial status, or disability in accordance with fair housing laws. These laws include but are not limited to Title VIII of the Civil Rights Act of 1968, Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, Executive Orders 11063 and 12259 – Equal Opportunity in Housing, Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act (ADA).

(l) **Records, Record Keeping.**

(i) **Establishment and Maintenance of Records** - Records shall be maintained under this Agreement in compliance with §92.508 of the HOME Program Rules and Regulations. Except as otherwise specifically provided therein, records shall be maintained for a period of five (5) years after the Project Completion Date or during the Affordability term and for a period of 3 years thereafter.

(ii) **Documentation of Eligible Project Costs** - All costs of the Project shall be supported by properly executed payrolls, time records, invoices, agreements, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, agreements, voucher orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible. The Contractor shall submit copies of all independent audits performed during the term of this Agreement to the Lead Entity. All records must be kept according to standard accounting practices.

(iii) **Reports** – At such times and in such forms as the City, County or HUD require under the CDBG or HOME Program Rules and Regulations, and the UAR, there shall be furnished to the City, County or HUD statements, records, data and information, pertaining to matters covered by this Agreement.

- (m) **Employment and Tax Matters.** The Contractor assumes all responsibility for any and all workers' compensation premiums, unemployment compensation premiums, and federal, state and local taxes due on the compensation paid to all its employees. The Community agrees to follow all federal, state and local laws and regulations pertaining to any employees the Community may use to provide services under this Agreement.

4.2. **Negative Covenants of the Contractor.** Throughout the term of this Development Agreement, the Contractor shall not:

- (a) **Existence.** Transfer or otherwise dispose of all, or substantially all, of the Contractor's assets, consolidate with or merge into any other entity, or permit one or more entities to consolidate with or merge into the Contractor; provided, however, that the Contractor may, without violating the agreement contained in this subsection, consolidate with or merge into another entity, or permit one or more other entities to consolidate with or merge into the Contractor, or transfer, or otherwise dispose of all, or substantially all, of the Contractor's assets and thereafter

dissolve, if: (i) the written consent of the City is obtained, which consent shall not be unreasonably withheld, (ii) the surviving, resulting or transferee entity, as the case may be, assumes in writing all of the respective obligations of the Contractor, as applicable, hereunder (if such surviving, resulting or transferee entity is other than the Contractor, as applicable); and (iii) the surviving, resulting or transferee entity, as the case may be, is duly organized and validly existing as a legal entity under the laws of the State qualified to do business therein, as applicable immediately prior to such disposition, consolidation or merger, transfer or change of form.

- (b) **Dissolution.** Permit or cause any transfer, issuance, retirement or other transaction, of any interest in the Contractor provided; however, the Contractor shall be permitted to transfer, issue, or retire interests in the Contractor in the following instances: (1) interests may be transferred, issued, or retired without the City's prior written consent, pursuant to the terms of an order of a court of competent jurisdiction; (2) interests may be transferred, issued, or retired, without the City's prior written consent, provided that the transferee of said interest in the Contractor is an existing member of the Contractor; or (3) for any other reasons only upon the Director's prior written consent, which consent shall not be unreasonably withheld.
- (c) **Agreements.** Enter into any agreement containing any provision, which would be violated or breached by the performance of the Contractor's obligations hereunder or under any instrument or document delivered or to be delivered or to be delivered by the Contractor hereunder or in connection herewith.
- (d) **Assignment of Agreement.** In whole or in part, assign this Development Agreement without the prior written consent of the City.

ARTICLE V

EVENTS OF DEFAULT, REMEDIES AND TERMINATION

- 5.1. **Events of Default.** Each of the following shall be an "Event of Default":
- (a) Failure by the Contractor to complete the Project on the Project Site by the Completion Date.
 - (b) Failure by the Contractor, subject to Force Majeure, to observe or perform any term, covenant to be observed or performed by the Contractor under this Development Agreement (other than as referred to in paragraph (a) of this Section), and continuation of such failure for thirty (30) days after written notice thereof shall have been given to the Contractor by the City, or for such longer period as the City may agree to in writing;
 - (c) The Contractor shall: (i) admit in writing the Contractor's inability to pay the Contractor's debts generally as such debts become due; (ii) (a) commence a voluntary bankruptcy case concerning the Contractor or (b) have an involuntary bankruptcy case commenced against the Contractor and have an order for relief entered in any such case or have the case remain undismissed and unstayed for

ninety (90) days; (iii) commence a proceeding under any reorganization or other similar law, or have such a proceeding commenced against the Contractor and either have an order of insolvency or reorganization entered against the Contractor or have the proceeding remain undismissed and unstayed for ninety (90) days; (iv) make an assignment for the benefit of creditors; (v) have a receiver, trustee or custodian appointed for the Contractor or for the whole or any substantial part of the Contractor's property or a receiver, trustee, custodian or any other officer or representative of the court or creditors, or any court or government officer or agency shall take and hold possession of any substantial part of the Contractor's property, or (vi) any other action for the purpose of effecting any of the foregoing;

- (d) Any representation or warranty made by the Contractor, or any of the Contractor's officers, herein in connection herewith shall prove to have been incorrect in any material respect when made;
- (e) If at any time it shall be discovered that any material representation, statement, report or certificate made now or hereafter by the Contractor was when made intentionally untrue in any material respect.
- (f) The City will follow 24 CFR 85.43 for suspension or termination should the "Contractor" materially fail to comply with any term of the agreement and the City further reserves the right to terminate this agreement for convenience in accordance with 24 CFR 85.44.

The Contractor shall promptly give notice to the City of the existence of an event of Force Majeure and shall use its best efforts to mitigate or remove the effect thereof; provided, that the settlement of strikes or other industrial disturbances shall be entirely within the reasonable business discretion of the Contractor.

5.2. **Remedies on Default.** If an Event of Default shall have occurred and be continuing beyond the applicable prescribed time periods established in this Development Agreement, the City, at any time, at the City's election, may exercise any or all, or any combination of the remedies conferred upon or reserved to the City under this Development Agreement, or any of the other Documents or any instrument or document executed in connection therewith, or now or hereafter existing at law, or in equity or by statute. Subject to the foregoing, any or all of the following remedies may be exercised:

- (a) If payments have not been disbursed, termination of any and all of the City's obligations under this Development Agreement;
- (b) Exercise all or any rights and remedies as the City may have under this Development Agreement, or any other instrument or document executed in connection therewith;
- (c) Cause the Project to be completed and the City for such purpose may use all available materials and equipment located upon the Project Site and purchase all other necessary materials and employ contractors and other employees. All sums expended by the City for such purpose shall constitute disbursements;

- (d) Exercise any rights, remedies and powers that the City may have at law or in equity to collect all amounts then due and thereafter to become due under this Development Agreement and any other instrument or document collateral thereto or to enforce the performance and observance of any other obligation or agreement of the Contractor under the Development Agreement or any instrument or document collateral thereto.

5.3. **No Remedy Exclusive.** No remedy conferred upon or reserved to the City by this Development Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Development Agreement or under any other document, now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City to exercise any remedy reserved to the City in this Article, it shall not be necessary to give any notice, other than such notice as may be expressly provided for herein or required by law.

5.4. **Agreement to Pay Expenses and Attorneys' Fees.** If an Event of Default shall occur and the City shall incur expenses, including reasonable attorney's fees, in connection with the enforcement of this Development Agreement, or any other documents association with the Project. The Contractor shall reimburse the City for the expenses so incurred upon demand.

5.5. **No Waiver.** No failure by the City to insist upon the strict performance by the Contractor of any provision hereof shall constitute a waiver of the City's right to strict performance, and no express waiver shall be deemed to apply to any other existing or subsequent right to remedy the failure by the Contractor to observe or comply with any provision hereof.

ARTICLE VI

MISCELLANEOUS PROVISIONS

6.1. **Term of Development Agreement.** This Development Agreement shall be and shall remain in full force and effect from the date of its delivery until the later of: (a) such time as all work has been verified as completed and passed all inspections necessary by the appropriate governmental authorities, or (b) the termination of this Development Agreement pursuant to Section 5.2(a), above.

6.2. **Notices.** All notices, certificates, requests or other communications hereunder shall be in writing and shall be deemed to be sufficiently given when mailed by registered or certified mail, postage prepaid, and addressed to the appropriate Notice Address. The Contractor or the City may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, requests or communications shall be sent.

6.3. **Extent of Covenants of the City; No Personal Liability.** All covenants, obligations and agreements of the City contained in this Development Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or

agreement shall be deemed to be a covenant, obligation or agreement of any present or future City in other than such City's official capacity.

6.4. **Binding Effect.** This Development Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon the City, the Contractor and their respective successors and assigns. The Contractor shall not assign any of the Contractor's rights or obligations under this Development Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld.

6.5. **Amendments and Supplements.** This Development Agreement may not be amended or supplemented except by a writing executed by the City and the Contractor.

6.6. **Execution Counterparts.** This Development Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

6.7. **Severability.** If any provision of this Development Agreement, or any covenant, obligation or agreement contained herein is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if such invalid or unenforceable provision were not contained herein. Such invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative made, entered into or taken in the manner and to the full extent permitted by law.

6.8. **Compliance with Federal, State and Local Laws and Regulations.** The Contractor shall comply with all applicable federal laws and regulations thereunder, executive orders and circulars governing the receipt, expenditure and use of the funds ("Applicable Law") to the extent required by Applicable Law.

6.9. **Absence of Relationships.** The execution and delivery of the Development Agreement, the receipt by the Contractor of payments and the performance by the Contractor of its obligations under the Development Agreement shall not be deemed to create any relationship between the Contractor and the City as a third party beneficiary, partner, joint venturer, shareholder, agent, principal or otherwise. The City is in no way lending its aid and credit to the Contractor. The Contractor shall make no representation or statement to any party to such effect.

6.10. **Prohibition of Conflict of Interest.** No individual, who is an employee, officer, agent, consultant of the City, an elected public official, or appointed public official, who exercises or has exercised any functions or responsibilities with respect to any activities that are connected with this Project or who is in a position to participate in a decision-making process or to gain inside information with regard to the Project, may obtain a personal or financial interest or benefit from the Project.

Also, the aforementioned individuals shall not have an interest in any contract, subcontract, or agreement with respect thereto, or in the proceeds thereunder, either for themselves or those with

whom they have family or business ties. The above restrictions shall apply to all activities comprising the Project, and shall cover any such interest or benefit during such person's tenure or at any time during the twelve months following the termination of such person's tenure.

6.11. **Captions.** The captions and headings in this Development Agreement shall be solely for convenience of reference and shall in no way define, limit or describe the scope or intent of any provisions or Sections of this Development Agreement.

6.12. **Choice of Law.** This Development Agreement shall be deemed to be a contract made under the laws of the State and for all purposes shall be governed by and construed in accordance with the laws of the State.

6.13 **Incorporation.** Each Exhibit (and all replacements, amendments and modifications thereto as are mutually agreed to by the Parties) attached to this Agreement are incorporated by reference as if fully stated herein. The recitals stated above are incorporated herein.

[Balance of page intentionally left blank; signatures follow.]

The Contractor certifies that (i) the Contractor's representations and warranties made in this Development Agreement, and in any other documents associated with this project remain true, accurate and complete to the best of its knowledge in all material respects; (ii) no default or event which, by notice, the passage of time or otherwise, would constitute a default, exists under the Development Agreement; and (iii) that the value of the Project is, or upon completion will be, equal to or greater than the total amount of money expended in the completion of the Project.

IN WITNESS WHEREOF, this Development Agreement has been executed and delivered all as of the date first hereinabove written.

Scalish Construction, LLC

By: _____

{signature}

FRANK SCALISH

{printed}

Title: _____

President

EIN: _____

26-3482141

And

By: _____

{signature}

{printed}

Title: _____

CITY OF LAKWOOD, OHIO

By: _____

Michael P. Summers

Michael P. Summers, Mayor

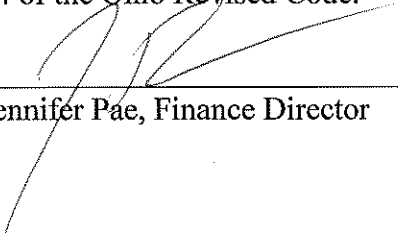
The legal form and correctness of the within document is hereby approved

Jennifer L. Swallow

Jennifer L. Swallow
Chief Assistant Law Director

CERTIFICATE OF FISCAL OFFICER

The undersigned fiscal officer of the City of Lakewood, Ohio ("City") under that certain Development Agreement, by and between **Scalish Construction, LLC, Inc.** a corporation created under and existing by virtue of the laws of the State of Ohio, as Contractor and **CITY OF LAKEWOOD, OHIO**, a political subdivision of the State of Ohio, dated as of MARCH 12, 2018 (the "Agreement"), hereby certifies that the money required to meet the obligations of the City under the Agreement for the fiscal year 2015 has been appropriated lawfully by the City Council of Lakewood, Ohio for that purpose and is in treasury of the City or is in the process of collection to the credit of an appropriate fund, free from any previous encumbrances, and is not appropriated for any other purpose. This certificate is given in compliance with Sections 5705.41 and 5705.44 of the Ohio Revised Code.



Jennifer Pae, Finance Director

LIST OF EXHIBITS/ATTACHMENTS

Exhibit A – Allowable Costs

Exhibit B – Scope of Work

Exhibit C – Time of Performance

Exhibit D – Requirements of Section 3 of the Housing and Urban Development Act of 1968

Exhibit A - Allowable Costs



SCALISH CONSTRUCTION

13316 Madison Ave. Lakewood, OH 44107
scallishconstruction.com • (216)226-5251
@ f t @scallishco

Estimate

Date	Estimate #
10/18/17	956

Name / Address
City of Lakewood Mary Leigh 12650 Detroit Rd Lakewood, OH 44107

<i>*Estimate valid for 30 days due to the fluctuating prices of material and labor</i>		*Payment Terms	Project Name
		Due on receipt	Lauderdale

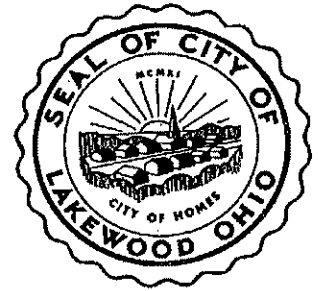
Item	Description	Total
GENERAL CONDITIONS	GENERAL CONDITIONS to include permits and procurement, debris storage and hauling, site work and cleaning; lead and asbestos remediation and clearance testing is not included in this estimate	4,230.77
O/Architectural Drawings	Design Services	12,603.08
Rough Carpentry	Labor and material for wall framing and drywall work, rear porch framing	26,680.00
Finish Carpentry	Labor and material for finish carpentry including cabinet and counters installation, bath accessories, trim and casing work	21,632.31
THERMAL/MOISTURE	THERMAL/MOISTURE labor and material for insulation, siding, exterior doors and windows	16,481.54
FINISHES	FINISHES including tile, flooring, floor refinishing, painting floors one and two only	18,923.08
M/Appliance	Appliances, including installation ALLOWANCE Assumes eighteen cubic foot over/under refrigerator/freezer, gas range, over-range microwave oven, dishwasher, Frigidaire or equivalent	3,076.92
MECHANICAL	Labor and material for rough and finish electric, plumbing and HVAC work	30,061.54
Garage	Garage; Two-car garage allowance: \$5161.54	13,666.15
GENERAL CONDITIONS	GENERAL CONDITIONS: Bid Bond	4,159.00
Landscaping	Landscaping ALLOWANCE Includes mulching front garden beds and basic lawn repair and seeding	1,153.85
		Total

By signing the above estimate you are entering into a contract for the above amount	Signature & Date _____
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DIVISION OF HOUSING AND BUILDING
12650 DETROIT AVENUE • LAKEWOOD, OHIO 44107
(216) 529-6270 • FAX (216) 529-6930
www.onelakewood.com

CORRECTION NOTICE



-REVISED LETTER

MARY LEIGH
C/O CITY OF LAKEWOOD
12650 DETROIT
LAKEWOOD, OH 44107

DATE: 07/12/2017

ZONING DISTRICT: R2
AUTHORIZED OCCUPANCY: 1 DU
PRESENT OCCUPANCY: VACANT

RE: 1477 LAUDERDALE AVE

GARAGE PARKING SPACES AVAILABLE: 0
OPEN PARKING SPACES AVAILABLE: 1

DATE OF INSPECTION: 2/23/2017 & 7/11/2017
RE-INSPECTION DATE: 8/14/17
TYPE OF INSPECTION: Certificate of Occupancy –
CN17-016097 – REVISED 7-12-2017

CONDITIONS ON DATE OF INSPECTION: Cloudy ☐
TEMPERATURE ON DATE OF INSPECTION: 65 °F

Dear Sir/Madam:

A recent inspection of the above noted property disclosed the following corrections are necessary for safe, sanitary, and proper maintenance standards as required by the Codified Ordinances of the City of Lakewood (Ord. 85-78).

The personnel of the Division of Housing and Building want to cooperate with you in keeping this city a fine place to reside. Efforts in maintaining this property are appreciated. The enforcement of Lakewood's Codes is critical to the future of the City and our department is prepared to work with you to make the following corrections.

If you have any questions on complying with the aforementioned correction(s), or if I may be of any assistance, do not hesitate to contact me. A re-inspection will occur on or about the above listed dates to verify compliance.

Property owners may qualify for financial assistance for major building corrections. Please contact the Division of Community Development at (216) 529-4663 for information about financial assistance.

This was a VISUAL INSPECTION. The city assumes no liability or responsibility for failure to report violations that may exist and makes no guarantee whatsoever that future violation(s) cannot or will not occur.

Correction Needed	Additional Information	Date to Comply
107. Remove debris/unsightly material from yard and driveway area(s) (1306.31)	Yard areas.	8/14/2017
113. Maintain lawn/landscaping/high grass/weeds (1306.31) (1775.01)		8/14/2017

Correction Needed	Additional Information	Date to Comply
116. Maintain fence (1306.31)		8/14/2017
120. Maintain foundation/exterior walls/roof (1306.29(a)(c)) 1306.30(a)(b)(1) (1306.32)	Under basement windows.	8/14/2017
124. Maintain chimney (1306.30(a))	Tuck point as necessary.	8/14/2017
126. Maintain Siding (1306.30(b)(1)(2))	Replace or paint to match and conform. Remove dead vines.	8/14/2017
128. Paint exterior surfaces where weathered/peeling (1306.30(c))	Window trim as necessary and porch ceiling.	8/14/2017
133. Maintain/provide doors/windows/screens 1306.25/29(d) 1306.30(b)(1) 1306.32	As necessary	8/14/2017
134. Provide closer for screen/storm doors (1306.29(D))	North side.	8/14/2017
135. Repair/replace porch decking/ceiling/pillars/rails/trim/lattice (1306.30(b)(1)(2))	Lattice rear porch	8/14/2017
150. Other Exterior Violation - See Notes	Remove dead-end wiring/cables. Maintain porch light. Provide GFCI and waterproof cover on rear porch(1306.22). Remove nuisance vegetation around foundation.(1306.29(a).	8/14/2017
201. Provide/Maintain basic kitchen and bathroom facilities (1306.10/32)		8/14/2017

Correction Needed	Additional Information	Date to Comply
202. Provide/Maintain approved light and ventilation (1306.11/17/32)	Bathroom	8/14/2017
208. Maintain interior doors operable (1306.15(c))	SW Bedroom closet.	8/14/2017
210. Maintain window(s)/door(s) operable/in good repair (1306.29(d)) (1306.32/73)	Throughout	8/14/2017
215. Provide/Maintain locks at entrances (1306.29(f))	Rear door	8/14/2017
218. Remove unapproved window coverings (1306.73)		8/14/2017
219. Provide/Maintain approved connection of plumbing fixtures (1306.13/32)	Provide approved connections of DWV for bath group.	8/14/2017
220. Maintain plumbing fixture(s), water supplies/valves and waste pipes (1306.29(g))	Remove S-trap under kitchen sink. The main stack is severely corroded, we recommend replacement. Replace water supply pipe east basement above beam (corrosion), repair disconnected water supply pipe west basement (2).	8/14/2017
221. Provide/maintain floor drain strainer. (1306.29(a))	Maintain floor drain.	8/14/2017
222. Provide approved DWV fitting(s). (1306.29(g))	Water closet to stack.	8/14/2017
232. Provide/Maintain approved heating facilities (1306.18/19)	Clean & check furnace.	8/14/2017

Correction Needed	Additional Information	Date to Comply
240. Provide approved installation of elec. conductors (1306.22)	To kitchen light fixture, basement work bench and basement light fixture.	8/14/2017
239. Provide/Maintain electrical facilities (1306.22/32)	A dead-end was observed above the furnace. Provide dead front for main panel. It is OK to energize the existing FP panel, but it is recommended to replace FP panel and sub-panel to accommodate modern loads.	8/14/2017
233. Provide/Maintain approved flue connections (1306.20)	HWT flue pipe has dip.	8/14/2017
242. Maintain receptacles/switches/fixtures (1306.22)	Maintain light fixtures throughout.	8/14/2017
244. Seal unused openings in all boxes/panels, provide approved overcurrent protection (1306.22)	Replace missing knockouts in panel and junction boxes in basement.	8/14/2017
247. Ground all panel boards/bond the water meter (1306.22)	Water pipe is disconnected and doesn't provide continuous ground.	8/14/2017
248. Provide working clearance at electrical equipment (1306.22)		8/14/2017
253. Maintain Premises safe and sanitary (1306.29/32)	Maintain premises clean and sanitary. Maintain painted surfaces throughout.	8/14/2017
255. Provide/maintain CO detector within 24 hours. CO	Up hall	8/14/2017

Correction Needed	Additional Information	Date to Comply
detector shall be hard wired or 110 v A.C.(plug in) (1331.04(b))		
256. Provide/maintain smoke detector within 24 hours. Smoke detectors shall be hard-wired or sealed, tamper proof, long life battery type. (1331.04(b))	Up hall	8/14/2017
257. Maintain foundation, floors and walls (1306.29(a)(b)) (1306.32)	Maintain basement floor. Seal foundation walls to prevent seepage.	8/14/2017
260. Maintain floors/walls/ceilings clean & sanitary (1306.29 (k))	Replace kitchen floor and ceiling	8/14/2017
261. Repair/seal drywall/plaster (1306.29(k))	Throughout	8/14/2017
262. Scrape/paint interior surfaces (1306.29(k))	Throughout.	8/14/2017
270. This inspection was conducted with utilities off; additional corrections may be required at reinspection. (1306.29(i))		8/14/2017
271. Other Interior Violation - See Notes	Remove/replace carpet on stairs, it is a trip hazard. (1306.29(e))	8/14/2017

PER THE REQUIREMENT OF LAKEWOOD CODIFIED ORDINANCES, FAILURE TO COMPLY BY THE SPECIFIED DATES MAY RESULT IN THIS MATTER BEING REFERRED TO THE LAKEWOOD MUNICIPAL COURT POSSIBLY RESULTING IN FINES AND/OR PROSECUTION.

Prior to the start of work, permits are required for electrical, plumbing, heating, air conditioning, building, fencing, paving, and/or demolition work.

Thank you for your anticipated cooperation.

**Joseph A. Meyers
Assistant Building Commissioner
Phone: (216) 529-6293
E-Mail Address: Joseph.Meyers@lakewoodoh.net
CC: Electronic File**

Exhibit C - Time of Performance

Construction will begin no later than April 15, 2018, and be completed by August 15, 2018. Scalish Construction, LLC agrees to obtain all necessary approvals, reviews, performance bonds and permits in a timely manner so as to ensure that work commences no later than April 15, 2018. Any changes to these or future timelines must be submitted by the Developer to and approved by the City of Lakewood in writing. The City reserves the right to deny such requests in order to meet its program funding timeliness requirements.

Exhibit D

**REQUIREMENT OF SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT
ACT OF 1968**

- (a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- (c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- (d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- (e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- (f) Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

- (g) With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).